

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re:

MOHAMMED I. YAZDANI and
DARLENE V. CMELKA

Debtor(s)

Case No. 1:16-bk-30984

Chapter 13

Honorable LaShonda A. Hunt

NOTICE OF MOTION

To: Marilyn O. Marshall, Chapter 13 Trustee (via Electronic Case Filing)
Vanderbilt Mortgage and Finance, Inc c/o *CT Corporation System, 208 South LaSalle, Suite 814, Chicago, IL 60604* (via Certified Mail)
Vanderbilt Mortgage and Finance, Inc. Attn: Amy Burns, PO Box 9800, Mayville, TN 37802. (Via US First Class Mail)
Mohammed I. Yazdani and Darlene V. Cmelka, 3619 N. Hamilton Avenue, Chicago, IL 60618 (via US First Class Mail)

PLEASE TAKE NOTICE that on February 13, 2017 at 10:00 a.m., the undersigned will appear before the Honorable Judge LaShonda A. Hunt at the Everett McKinley Dirksen United States Courthouse, located at 219 S. Dearborn, Room 719, Chicago, IL and will then and there present **DEBTOS' OBJECTION TO CLAIM 9-1**, at which time you may appear, if you so choose.

CERTIFICATE OF SERVICE

I, Orlando Velazquez, hereby certify that I caused a copy of this notice and motion to be served, via electronic case filing to Marilyn O. Marshall, Chapter 13 Trustee and via United States First Class Mail to all parties listed on the attached service list, on January 12, 2017 before the hour of 5:00 p.m. from the office located at 900 Jorie Boulevard, Suite 150, Oak Brook, Illinois 60523.

/s/ Orlando Velazquez
Orlando Velazquez
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**DEBTORS' OBJECTION TO CLAIM 9-1 OF VANDERBILT MORTGAGE AND
FINANCE, INC**

NOW COMES, MOHAMMED I. YAZDANI and DARLENE V. CMELKA ("Debtors"), by and through their attorneys, SULAIMAN LAW GROUP, LTD., and pursuant to Federal Bankruptcy Procedure Rule 3007, Objecting to Claim 9-1 filed by Vanderbilt Mortgage and Finance, Inc. and in support thereof, states as follows:

1. The Debtors filed for relief under Chapter 13 of the U.S Bankruptcy Code on September 29, 2016.
2. The 341 Meeting of Creditors was held and concluded on November 8, 2016.
3. Debtors' case has not yet been confirmed.
4. On November 16, 2016, Vanderbilt Mortgage and Finance, Inc. filed an unsecured claim in the amount of \$277,388.01 alleging that the said amount stemmed from a personal deficiency judgement resulting from a foreclosure auction held for the debtors' property located at 1513 Wood Street, Crete, IL.
5. Upon a review of this proof of claim, the debtors recalled that they were working on loss mitigation options with Vanderbilt Mortgage and Finance, Inc.

6. The debtors were unable to obtain a loan modification on this debt, therefore they relinquished the rights to the property referenced above back to Vanderbilt Mortgage and Finance, Inc. in exchange for the release of any personal obligation on this debt.

STANDARD

7. "Claim objectors carry the initial burden to produce some evidence to overcome the rebuttable presumption of validity." *In re Dugar*, 392 B.R. 7455, 749 (Bankr.N.D.Ill 2008).
8. "Once the objector has produced some basis for calling into question allowability of a claim, the burden then shifts back to the claimant to produce evidence to meet the objection and establish that the claim in fact is allowable." *In re Vanhook*, 426 B.R. 296, 299 (Bank. N.D. Ill, 2010).
9. "However, the ultimate burden of persuasion always remains with the claimant to prove entitlement to claim." *In re Watson*, 402 B.R.294, 297 (Bankr. N.D. Ind. 2009)

ARGUMENT

10. Vanderbilt Mortgage and Finance, Inc. is incorrect as the debtors had already relinquished the property back to the lender in full satisfaction of their claim.

WHEREFORE, the Debtors pray this Honorable Court for the following relief:

- A. Sustaining Debtors' Objection to Claim 9-1;
- B. For any and all other relief this Court deems fair and proper.

Dated: January 12, 2017

/s/ Orlando Velazquez

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*Counsel for Mohammed Yazdani and
Darlene V. Cmelka*